

APPEAL NO. 020568  
FILED APRIL 29, 2002

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). Following a contested case hearing held on February 12, 2002, the hearing officer determined that the respondent (claimant) sustained a compensable injury on \_\_\_\_\_. The appellant (self-insured) has filed an appeal challenging this determination for evidentiary insufficiency and stressing that there is no evidence of a mechanism of injury to the left side of the claimant's neck to correspond to her pain complaints and that mere pain alone is not an injury. The claimant's response urges affirmance.

DECISION

Affirmed.

The claimant testified that on \_\_\_\_\_, when she strapped onto her shoulders the 14-pound machine she used to check machinery for vibrations, as she had done for 10 of the past 23 years she had worked for the self-insured, she felt very light-headed and experienced immediate pain shooting down her neck to the base of her skull and into her right shoulder. She acknowledged that when this injury occurred, she was still receiving treatment for a compensable injury to her knees and low back injury, sustained at work in 1999 when she stumbled in the dark and fell. The carrier, relying on perceived inconsistencies in the medical evidence, contends that the claimant failed to prove a mechanism for injury as well as damage to the physical structure of her body, and that all the claimant actually proved was that she had pain which, alone, does not constitute an injury as defined in Section 401.011(26).

The hearing officer found that on \_\_\_\_\_, the claimant did sustain damage or harm to the physical structure of her body, namely, her cervical spine. The claimant had the burden to prove that she sustained the claimed injury. Johnson v. Employers Reinsurance Corporation, 351 S.W.2d 936 (Tex. Civ. App.-Texarkana 1961, no writ). The Appeals Panel has stated that in workers' compensation cases, the disputed issue of injury can, generally, be established by the lay testimony of the claimant alone. Texas Workers' Compensation Commission Appeal No. 91124, decided February 12, 1992. However, the testimony of a claimant, as an interested party, only raises issues of fact for the hearing officer to resolve and is not binding on the hearing officer. Texas Employers Insurance Association v. Burrell, 564 S.W.2d 133 (Tex. Civ. App.-Beaumont 1978, writ ref'd n.r.e.). The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)), resolves the conflicts and inconsistencies in the evidence (Garza v. Commercial Insurance Company of Newark, New Jersey, 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ)), and determines what facts have been established from the conflicting evidence. St. Paul Fire & Marine Insurance Company v. Escalera, 385 S.W.2d 477 (Tex. Civ. App.-San Antonio 1964, writ ref'd n.r.e.). As an appellate reviewing tribunal, the Appeals Panel will not disturb the challenged factual findings of a hearing officer unless

they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust and we do not find them so in this case. In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The decision and order of the hearing officer are affirmed.

The true corporate name of the insurance carrier is **INTERNATIONAL PAPER COMPANY, a certified self-insured**, and the name and address of its registered agent for service of process is

**C. T. CORPORATION  
811 DALLAS AVENUE  
HOUSTON, TEXAS 77002.**

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Philip F. O'Neill  
Appeals Judge

CONCUR:

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Chris Cowan  
Appeals Judge

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Thomas A. Knapp  
Appeals Judge